

SSB 5499 - S AMD TO S AMD (KAST HESS 012)99  
By Senators Mulliken and Oke

1 On page 1, after line 3 of the amendment, insert the following:

2 "Sec. 1. RCW 29A.04.008 and 2004 c 271 s 102 are each amended to  
3 read as follows:

4 As used in this title:

5 (1) "Ballot" means, as the context implies, either:

6 (a) The issues and offices to be voted upon in a jurisdiction or  
7 portion of a jurisdiction at a particular primary, general election, or  
8 special election;

9 (b) A facsimile of the contents of a particular ballot whether  
10 printed on a paper ballot or ballot card or as part of a voting machine  
11 or voting device;

12 (c) A physical or electronic record of the choices of an individual  
13 voter in a particular primary, general election, or special election;  
14 or

15 (d) The physical document on which the voter's choices are to be  
16 recorded;

17 (2) "Paper ballot" means a piece of paper on which the ballot for  
18 a particular election or primary has been printed, on which a voter may  
19 record his or her choices for any candidate or for or against any  
20 measure, and that is to be tabulated manually;

21 (3) "Ballot card" means any type of card or piece of paper of any  
22 size on which a voter may record his or her choices for any candidate  
23 and for or against any measure and that is to be tabulated on a vote  
24 tallying system;

25 (4) "Sample ballot" means a printed facsimile of all the issues and  
26 offices on the ballot in a jurisdiction and is intended to give voters  
27 notice of the issues, offices, and candidates that are to be voted on  
28 at a particular primary, general election, or special election;

29 (5) "Provisional ballot" means a ballot issued to a voter at the  
30 polling place on election day by the precinct election board, for one  
31 of the following reasons:

1 (a) The voter's name does not appear in the poll book for the  
2 precinct at which the voter appears and who therefore cannot be  
3 verified as a registered voter;

4 (b) There is an indication in the poll book that (~~the voter has~~  
5 ~~requested~~) an absentee ballot(~~(, but the voter wishes to vote at the~~  
6 ~~polling place)~~) has been issued;

7 (c) There is a question on the part of the voter concerning the  
8 issues or candidates on which the voter is qualified to vote;

9 (6) "Party ballot" means a primary election ballot specific to a  
10 particular major political party that lists all partisan offices to be  
11 voted on at that primary, and the candidates for those offices who  
12 affiliate with that same major political party;

13 (7) "Nonpartisan ballot" means a primary election ballot that lists  
14 all nonpartisan races and ballot measures to be voted on at that  
15 primary."

16 Renumber the sections consecutively and correct any internal  
17 references accordingly.

18 On page 6, after line 38, insert the following:

19 "**Sec. 4.** RCW 29A.08.625 and 2003 c 111 s 240 are each amended to  
20 read as follows:

21 (1) A voter whose registration has been made inactive under this  
22 chapter and who offers to vote at an ensuing election before two  
23 federal elections have been held must be allowed to vote a regular  
24 ballot and the voter's registration restored to active status.

25 (2) A voter whose registration has been properly canceled under  
26 this chapter shall vote a provisional ballot. The voter shall mark the  
27 provisional ballot in secrecy, the ballot placed in a security  
28 envelope, the security envelope placed in a provisional ballot  
29 envelope, and the reasons for the use of the provisional ballot noted.

30 (3) Upon receipt of such a voted provisional ballot the auditor  
31 shall investigate the circumstances surrounding the original  
32 cancellation. If he or she determines that the cancellation was in  
33 error, the voter's registration must be immediately reinstated, and the  
34 voter's provisional ballot must be counted. If the original

1 cancellation was not in error, the voter must be afforded the  
2 opportunity to reregister at his or her correct address, and the  
3 voter's provisional ballot must not be counted.

4 (4) The names and addresses of provisional voters is not a matter  
5 of public record, and no one other than an election officer may contact  
6 an individual provisional voter. The election officer shall contact  
7 the voter via first class mail within forty-eight hours of discovery  
8 and shall inform the voter of relevant deadlines.

9 **Sec. 5.** RCW 29A.08.820 and 2003 c 111 s 254 are each amended to  
10 read as follows:

11 When the right of a person has been challenged under RCW 29A.08.810  
12 or 29A.08.830(2), the challenged person shall be permitted to vote a  
13 provisional ballot, which shall be placed in a sealed envelope separate  
14 from other voted ballots. In precincts where voting machines are used,  
15 any person whose right to vote is challenged under RCW 29A.08.810 or  
16 29A.08.830(2) shall be furnished a provisional paper ballot, which  
17 shall be placed in a sealed envelope after being marked. Included with  
18 the (~~challenged~~) provisional ballot shall be (1) an affidavit filed  
19 under RCW 29A.08.830 challenging the person's right to vote or (2) an  
20 affidavit signed by the precinct election officer and any third party  
21 involved in the officer's challenge and stating the reasons the voter  
22 is being challenged. The sealed provisional ballots (~~of challenged~~  
23 ~~voters~~) shall be transmitted at the close of the election to the  
24 canvassing board or other authority charged by law with canvassing the  
25 returns of the particular primary or election. The county auditor  
26 shall notify the challenger and the challenged voter, by certified  
27 mail, of the time and place at which the county canvassing board will  
28 meet to rule on (~~challenged~~) provisional ballots. If the challenge  
29 is made by a precinct election officer under RCW 29A.08.810, the  
30 officer must appear in person before the board unless he or she has  
31 received written authorization from the canvassing board to submit an  
32 affidavit supporting the challenge. If the challenging officer has  
33 based his or her challenge upon evidence provided by a third party,  
34 that third party must appear with the challenging officer before the  
35 canvassing board, unless he or she has received written authorization  
36 from the canvassing board to submit an affidavit supporting the  
37 challenge. If the challenge is filed under RCW 29A.08.830, the  
38 challenger must either appear in person before the board or submit an

1 affidavit supporting the challenge. The challenging party must prove  
2 to the canvassing board by clear and convincing evidence that the  
3 challenged voter's registration is improper. If the challenging party  
4 fails to meet this burden, the ((challenged)) provisional ballot shall  
5 be accepted as valid and counted. The canvassing board shall give the  
6 challenged voter the opportunity to present testimony, either in person  
7 or by affidavit, and evidence to the canvassing board before making  
8 their determination. All ((challenged)) provisional ballots must be  
9 determined no later than the time of canvassing for the particular  
10 primary or election. The decision of the canvassing board or other  
11 authority charged by law with canvassing the returns shall be final.  
12 Challenges of absentee ballots shall be determined according to RCW  
13 29A.40.140.

14 **Sec. 6.** RCW 29A.08.830 and 2003 c 111 s 255 are each amended to  
15 read as follows:

16 (1) Any registered voter may request that the registration of  
17 another voter be canceled if he or she believes that the voter does not  
18 meet the requirements of Article VI, section 1 of the state  
19 Constitution or that voter no longer maintains a legal voting residence  
20 at the address shown on his or her registration record. The challenger  
21 shall file with the county auditor a signed affidavit subject to the  
22 penalties of perjury, to the effect that to his or her personal  
23 knowledge and belief another registered voter does not actually reside  
24 at the address as given on his or her registration record or is  
25 otherwise not a qualified voter and that the voter in question is not  
26 protected by the provisions of Article VI, section 4, of the  
27 Constitution of the state of Washington. The person filing the  
28 challenge must furnish the address at which the challenged voter  
29 actually resides.

30 (2) Any such challenge of a voter's registration and right to vote  
31 made less than thirty days before a primary or election, special or  
32 general, shall be administered under RCW 29A.08.820. The county  
33 auditor shall notify the challenged voter and the precinct election  
34 officers in the voter's precinct that a challenge has been filed,  
35 provide the name of the challenger, and instruct both the precinct  
36 election officers and the voter that, in the event the challenged voter  
37 desires to vote at the ensuing primary or election, a ((challenged))  
38 provisional ballot will be provided. The voter shall also be informed

1 that the status of his or her registration and the disposition of any  
2 (~~challenged~~) provisional ballot will be determined by the county  
3 canvassing board in the manner provided by RCW 29A.08.820. If the  
4 challenged voter does not vote at the ensuing primary or election, the  
5 challenge shall be processed in the same manner as challenges made more  
6 than thirty days prior to the primary or election under RCW  
7 29A.08.840."

8 Renumber the sections following consecutively and correct internal  
9 references accordingly.

10 On page 9, line 34, strike all of section 7, and insert the  
11 following:

12 "NEW SECTION. **Sec. 7.** (1) Provisional or questionable ballots  
13 must not be tallied until the validity of the ballot or the voter has  
14 been confirmed and, if so, the ballots will be processed in similar  
15 manner to absentee ballots. A provisional ballot is issued to a person  
16 seeking to vote in a polling place under the following circumstances:

17 (a) The name of the voter does not appear in the poll book and:

18 (i) The voter's registration was canceled but the voter questions  
19 the validity of the cancellation;

20 (ii) The status of the voter's registration cannot be determined at  
21 that time; or

22 (iii) The voter is registered and assigned to another polling place  
23 or jurisdiction;

24 (b) The voter's name is in the poll book but there is an indication  
25 that the voter was issued an absentee ballot, and the voter wishes to  
26 vote at the polls; or

27 (c) Other circumstances as determined by the precinct election  
28 official.

29 (2) The precinct election official shall issue a provisional ballot  
30 outer envelope and a security envelope to the voter eligible for a  
31 provisional ballot. The voter shall vote the ballot in secrecy and,  
32 when done, place the ballot in the security envelope, then place the  
33 security envelope with the ballot in it in the provisional ballot outer  
34 envelope and return it to the precinct election official. The precinct  
35 election official shall ensure that the required information is

1 completed on the outside of the outer envelope and have the voter sign  
2 it in the appropriate space, and place it in a secure container  
3 designated for provisional ballots only.

4 (3) When the provisional ballot, including provisional ballots from  
5 other counties or states, are received in the elections center, the  
6 circumstances surrounding the provisional ballot must be investigated  
7 before certification of the primary or election. A provisional ballot  
8 cannot be tallied if the registered voter did not sign either the poll  
9 book or the provisional ballot envelope.

10 (4) When it is determined that the ballot is to be counted, the  
11 ballot must be processed in a manner similar to an absentee ballot  
12 except the provisional ballot outer envelopes must be retained  
13 separately from the absentee ballot return envelopes. The manual  
14 inspection of the ballots as required in WAC 434-261-070 or its  
15 successor must also be carried out.

16 NEW SECTION. **Sec. 8.** At a minimum, the following information will  
17 be required to be printed on the outer provisional ballot envelope:

18 (1) An oath for the voter to sign, as required by the Help America  
19 Vote Act, which must be included in substantially the following form:

20 "I affirm that I am a registered voter in the jurisdiction in which  
21 I am appearing and in which I wish to vote; and that I am eligible to  
22 vote in this election.";

23 (2) Name and signature of voter (must be the same as on the oath);

24 (3) Voter's registered address both present and former, if  
25 applicable;

26 (4) Voter's date of birth;

27 (5) Reason for the provisional ballot;

28 (6) Precinct and polling place at which voter has voted;

29 (7) Sufficient space to list disposition of the ballot after review  
30 by the county auditor.

31 No provisional ballot may be rejected for lack of the information  
32 described in this section as long as the voter provides a valid  
33 signature and sufficient information to determine eligibility.

34 NEW SECTION. **Sec. 9.** (1) Upon receipt of the provisional ballot,  
35 including provisional ballots from other counties or states, the  
36 auditor must investigate the circumstances surrounding the provisional  
37 ballot before certification of the primary or election. A provisional

1 ballot cannot be counted if the registered voter did not sign both the  
2 poll book and the provisional ballot envelope.

3 (a) If there is no record of the voter ever having been registered,  
4 the voter must be offered the opportunity to register, but the  
5 provisional ballot for the current election will not be counted.

6 (b) If the voter was previously registered and later canceled and  
7 the auditor determines that the cancellation was in error, the voter's  
8 registration will be immediately restored and the provisional ballot  
9 counted.

10 (c) If the auditor determines that the cancellation was not in  
11 error, the voter must be given the opportunity to reregister at the  
12 voter's correct address, but the provisional ballot for the current  
13 election will not be counted.

14 (2) If the voter is a registered voter but has voted a ballot other  
15 than the one that the voter would have received at his or her  
16 designated polling place, the auditor must ensure that only those votes  
17 for the positions or measures for which the voter was eligible to vote  
18 are counted, which may require coordination with other county auditors.

19 (3) If the voter is a registered voter in another county or state,  
20 the auditor shall forward the ballot and a corresponding voter guide,  
21 or other means by which the ballot can be interpreted including  
22 rotation if applicable, within five business days after election day to  
23 the supervisor of elections for the county for which the voter resides.  
24 If the provisional ballot envelope is not signed by the voter, a copy  
25 of the poll book page must be included. If the county is not known, it  
26 must be forwarded to the secretary of state, or counterpart, for the  
27 state in which the voter resides.

28 (4) If the auditor finds that an absentee voter who voted a  
29 provisional ballot at the polls has also voted an absentee ballot in  
30 that primary or election, the provisional ballot will not be counted.

31 (5) The auditor shall prepare a tally displaying the number of  
32 provisional ballots received, the number found valid and counted, the  
33 number rejected and not counted, and the reason for not counting the  
34 ballots, as part of the canvassing process and presented to the  
35 canvassing board before the certification of the primary or election.

36 NEW SECTION. **Sec. 10.** When the disposition of the provisional  
37 ballot determines that the provisional ballot is to be counted, the  
38 provisional ballot must be processed in a manner similar to an absentee

1 ballot as provided in chapters 29A.40 and 29A.60 RCW except the outer  
2 provisional ballot envelopes must be retained separately from the  
3 absentee ballot return envelopes. The manual inspection of the ballots  
4 as required in WAC 434-261-070 or its successor must also be carried  
5 out.

6 NEW SECTION. **Sec. 11.** The secretary of state shall establish a  
7 free access system (such as a toll-free telephone number or an Internet  
8 web site) that any individual who casts a provisional ballot may access  
9 to discover whether the vote of that individual was counted, and, if  
10 the vote was not counted, the reason why the vote was not counted. The  
11 secretary of state shall establish and maintain reasonable procedures  
12 necessary to protect the security, confidentiality, and integrity of  
13 personal information collected, stored, or otherwise used by the free  
14 access system established under this section. Access to information  
15 about an individual provisional ballot must be restricted to the  
16 individual who cast the ballot.

17 **Sec. 12.** RCW 29A.40.050 and 2003 c 111 s 1005 are each amended to  
18 read as follows:

19 (1) As provided in this section, county auditors shall provide  
20 special ((absentee)) provisional ballots to be used for state primary  
21 or state general elections. An auditor shall provide a special  
22 ((absentee)) provisional ballot only to a registered voter who  
23 completes an application stating that she or he will be unable to vote  
24 and return ((a regular)) an absentee ballot by normal mail delivery  
25 within the period provided for ((regular)) absentee ballots.

26 The application for a special ((absentee)) provisional ballot may  
27 not be filed earlier than ninety days before the applicable state  
28 primary or general election. The special ((absentee)) provisional  
29 ballot will list the offices and measures, if known, scheduled to  
30 appear on the state primary or general election ballot. The voter may  
31 use the special ((absentee)) provisional ballot to write in the name of  
32 any eligible candidate for each office and vote on any measure.

33 (2) With any special ((absentee)) provisional ballot issued under  
34 this section, the county auditor shall include a listing of any  
35 candidates who have filed before the time of the application for  
36 offices that will appear on the ballot at that primary or election and

1 a list of any issues that have been referred to the ballot before the  
2 time of the application.

3 (3) Write-in votes on special ((absentee)) provisional ballots must  
4 be counted in the same manner provided by law for the counting of other  
5 write-in votes. The county auditor shall process and canvass the  
6 special ((absentee)) provisional ballots provided under this section in  
7 the same manner as ((other)) absentee ballots under ((this)) chapters  
8 29A.40 and ((chapter)) 29A.60 RCW.

9 (4) A voter who requests a special ((absentee)) provisional ballot  
10 under this section may also request an absentee ballot under RCW  
11 29A.40.020(4). If the ((regular)) absentee ballot is properly voted  
12 and returned, the special ((absentee)) provisional ballot is void, and  
13 the county auditor shall reject it in whole when special ((absentee))  
14 provisional ballots are canvassed.

15 NEW SECTION. Sec. 13. In addition to the material required by RCW  
16 29A.40.091, each county auditor shall include with any special  
17 provisional ballot mailed the following information:

18 (1) Instructions for voting the ballot;

19 (2) Instructions for correcting a spoiled ballot;

20 (3) The fact that political party designation should be included  
21 with all write-ins for partisan office;

22 (4) A listing of all offices and measures that will appear upon the  
23 ballot, together with a listing of all persons who have filed for  
24 office or who have indicated their intention to file for office;

25 (5) A copy of any applicable voters' guide available at that time;

26 (6) The fact that the voter may vote for as many or as few offices  
27 or measures as he or she desires;

28 (7) The fact that the voter is entitled to request, and  
29 subsequently vote a regular absentee ballot, and that if the regular  
30 absentee is received during the time period provided by law for the  
31 canvassing of absentee ballots it will be tabulated and the special  
32 provisional ballot will be voided.

33 NEW SECTION. Sec. 14. No special provisional ballot may be  
34 provided earlier than ninety days before a primary or election. An  
35 application received by a county auditor more than ninety days before  
36 a primary or general election may be either returned to the applicant

1 with the explanation that the request is premature or may be held by  
2 the auditor until the appropriate time and then processed.

3 **Sec. 15.** RCW 29A.40.140 and 2003 c 111 s 1014 are each amended to  
4 read as follows:

5 The qualifications of any absentee voter may be challenged at the  
6 time the signature on the return envelope is verified and the ballot is  
7 processed by the canvassing board. The board has the authority to  
8 determine the legality of any absentee ballot challenged under this  
9 section. Challenged ballots must be handled in accordance with chapter  
10 ((29A.08)) . . . RCW (sections 5 through 12 of this act).

11 **Sec. 16.** RCW 29A.44.330 and 2003 c 111 s 1131 are each amended to  
12 read as follows:

13 The programmed memory pack for each poll-site ballot counting  
14 device must be sealed into the device during final preparation and  
15 logic and accuracy testing. Except in the case of a device breakdown,  
16 the memory pack must remain sealed in the device until after the polls  
17 have closed and all reports and telephonic or electronic transfer of  
18 results are completed. After all reporting is complete the precinct  
19 election officers responsible for transferring the sealed voted ballots  
20 under RCW 29A.60.110 shall ensure that the memory pack is returned to  
21 the elections department. If the entire poll-site ballot counting  
22 device is returned, the memory pack must remain sealed in the device.  
23 If the poll-site ballot counting device is to remain at the polling  
24 place, the precinct election officer shall break the seal on the device  
25 and remove the memory pack and seal and return it along with the  
26 irregularly voted ballots and ((special)) provisional ballots to the  
27 elections department on election day.

28 **Sec. 17.** RCW 29A.44.340 and 2003 c 111 s 1132 are each amended to  
29 read as follows:

30 Each poll-site ballot counting device must be programmed to return  
31 all blank ballots and overvoted ballots to the voter for private  
32 reexamination. The election officer shall take whatever steps are  
33 necessary to ensure that the secrecy of the ballot is maintained. The  
34 precinct election officer shall provide information and instruction on  
35 how to properly mark the ballot. The voter may remark the original  
36 ballot, may request a new ballot under RCW 29A.44.040, or may choose to

1 complete a (~~special~~) provisional ballot envelope and return the  
2 ballot as a (~~special~~) provisional ballot."

3 Renumber the sections following consecutively and correct internal  
4 references accordingly.

5 On page 20, after line 15 of the amendment, insert the following:

6 "NEW SECTION. **Sec. 25.** (1) Sections 5 through 9, 11, and 12 of  
7 this act constitute a new chapter in Title 29A RCW, to be captioned  
8 "Provisional ballots."

9 (2) RCW 29A.40.050, as amended by section 10 of this act, is  
10 recodified as a section in the new chapter created in subsection (1) of  
11 this section."

12 **SSB 5499** - S AMD TO S AMD (KAST HESS 012)

13 By Senator Mulliken

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15 On page 20, on line 21 of the title amendment, after "29A.04.611,",  
16 insert "29A.08.625, 29A.08.820, 29A.08.830," and after "29A.40.110,"  
17 insert "29A.40.050, 29A.40.140, 29A.44.330, 29A.44.340,"

18 On line 24 of the title amendment, strike "new sections to chapter  
19 29A.44" and insert "a new section to chapter 29A.44"

20 On line 26 of the title amendment, after "RCW;" insert "adding a new  
21 chapter to Title 29A RCW; recodifying RCW 29A.40.050;"

« END ---

**EFFECT:** (1) Makes the names and addresses of voters who voted on a  
provisional ballot not a matter of public record;  
(2) Requires that no person other than an elections officer may  
contact an individual provisional voter;

(3) Requires that elections officers contact the voter within 48 hours of discovery of rejected ballot;

(4) Harmonizes the term "provisional ballot" by replacing "challenged ballot" and "special ballot";

(5) Requires that provisional ballots be processed similar to absentee ballots;

(6) Provides for minimum information to be printed on outer provisional ballot envelopes;

(7) Requires that individuals who vote with a provisional ballot sign both the poll book and the provisional ballot envelope;

(8) Requires that secretary of state provide free access system to allow provisional voters to check status of their vote.